In the High Court of Judicature at Madras

Dated: 08/10/2004

Coram

The Honourable Mr.Justice V.KANAGARAJ

Writ Petition No.15464 of 1999

The Management
Nedunkulam Primary Agricultural
Co-operative Bank Ltd.
Nedunkulam Post
via Poolampatti
Idaipadi & Taluk
Salem District. .. Petitioner

-Vs-

1. The Presiding Officer
Labour Court
Salem.

2. The Management
Ekapuram Primary Agricultural
Co-operative Bank Ltd.
Ekapuram Post 637 502
Via Elampillai
Sankari Taluk
Salem District

3. M.Govidaswamy .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India
for the prayer stated therein.

For petitioner : Mr.M.R.Raghavan

For respondents : Mr.R.Arumugham
for M/s.Aiyar & Dolia for R2
Mr.V.Vaijayanthimala-for R3

:O R D E R

The petitioner management has filed the above writ petition
praying to issue a writ of Certiorari, to call for the records on the file of
the first respondent herein pertaining to I.D.No.112 of 19976 and quash the

Award passed therein on 31.03.1999.

2. In the affidavit filed in support of the above writ petition, the writ petitioner would submit that the third respondent was employed initially under the petitioner with effects from 01.07.1983 as an Assistant; that subsequently he was promoted to the post of Secretary; that when he was functioning as Secretary to the petitioner, he committed certain misconducts and hence he was demoted to the post of Assistant with effects from 12.02.1991; that on representation the third respondent was permitted to continue in the petitioner establishment as Accountant from 04.08.1991; that while he was functioning as such he made a representation on 01.03.1994 stating that he got old parents in Ekapuram and hence with a view to take care of them, he sought for transfer to the second respondent establishment; that the petitioner wrote to the second respondent that the third respondent may be accommodated in the second respondent establishment for three years; that ultimately the Deputy Registrar of Co-operative Societies intervened in the matter and passed an order approving of the relinquishment of services of the third respondent in the petitioner society and his posting in the second respondent society; that on the basis of such an order, the third respondent was functioning in the second respondent society.

3. The petitioner would further submit that the Deputy Registrar of Co-operative Societies had granted the approval for the transfer of an employee from the petitioner Bank to the second respondent society and he was transferred; that the officer who subsequently was appointed to the post of Deputy Registrar of Co-operative Societies, Omalur objected to such relinquishment of services in the petitioner Establishment and posting of the third respondent in the second respondent establishment; that on the basis of the objection raised by the Deputy Registrar of Co-operative society, the second respondent sought to relieve the third respondent from the services of the second respondent; that in this connection the second respondent passed a resolution relieving the third respondent from the services of the second respondent; that ultimately when the third respondent was relieved from the services of the second respondent, the third respondent challenged the orders of termination passed by the second respondent and raised an Industrial Dispute.

4. In the I.D. Proceeding the main contention of the third respondent was that he was illegally terminated by the second respondent herein; that on that basis, however, he sought for relief as against the petitioner and the second respondent. The Labour Court taking cognizance of the Industrial dispute filed by the third respondent enquired into the matter before the Labour Court and the third respondent herein neither examined himself nor chose to mark any document. The petitioner as well as the second respondent marked 24 documents in order to substantiate their case. However, on the basis of various materials placed before it, the Labour Court passed an Award directing reinstatement of the third respondent as against the petitioner with backwages and continuity of service. The Award of the Labour Court directing reinstatement of the third respondent as against the petitioner is contrary to law and suffers due to errors apparent on the face

of the record. The third respondent himself has categorically stated in his claim statement that he was made perma nent in the second respondent society and he was illegally terminated by the second respondent. When such is the position, no relief ought to have been granted as against the petitioner. Further, the Labour Court committed error of law inasmuch as it gave credence to the communication from the Deputy Registrar of Co-operative Society and on that basis, granted relief to the third respondent. The third respondent ought to have proceeded against the order of the Deputy Registrar of Co-operative Societies in the appropriate forum and not before the Labour Court. There has been a misdirection on the part of Labour Court in this regard and hence the petitioner has filed the above writ petition with the prayer stated above.

5. During arguments, the learned counsel appearing on behalf of the petitioner reiterating the contentions raised in the affidavit filed in support of the above writ petition would submit that originally the third respondent was appointed under the petitioner Bank; that later, on the basis of deputation, he was transferred to the second respondent society; the Deputy Registrar of Co-operative Societies is bereft of such powers of transfer stating that there is no provision under law; that unless the petitioner has come forward to prove to the effect that the Deputy Registrar could not transfer any employee particularly of the cadre or category of Assistant from one Cooperative Society to others.

6. Before the Court of Labour Judge, Salem, the petitioner herein as first respondent has filed his written statement stating that the third respondent herein was an employee of the petitioner Bank from 01 .07.1983 to 31.03.1994; that while he was working as Secretary of the petitioner Bank, he has committed some mal practice for which he was demoted to the post of Accountant and was working till 31.03.1994; that on the request of the third respondent herein and also with the consent of the second respondent and on the basis of permission given by the Deputy Registrar of Co-operative Societies Omalur, the third respondent was sent to work as Accountant of the second respondent on foreign service for a period of three years; that he was relieved from the service of the first respondent on 31.03.1994; that when he was working as Accountant of the petitioner Bank, that is one year and 9 months, he had expressed his desire to become a permanent employee of the second respondent; that the said request was considered favourably by the second respondent by its resolution dated 28.12.1995 and appointed the third respondent as its own permanent employee in the post of the accountant with effects from 28.12.1995 onwards; that this fact had also been informed to the petitioner by the second respondent; that the second respondent had also requested the petitioner to transfer the amount under provident fund and security deposit, accounts standing to the credit of the petitioner to its account for which reply has been sent by the first respondent on 03.02.1996; that the third respondent had become a permanent regular employee of the second respondent society from 28.12.1995 onwards; the third respondent for all practical and legal purposes ceased to be an employee of the petitioner nor was there any lien on his job with the first respondent and as such the third respondent has no right or lien to claim to be an employee of the petitioner after he had been appointed as a permanent and

regular employee of the second respondent; the second respondent had terminated the services of the third respondent after one year and 3 months of regular and permanent service; the petitioner has nothing to do with the termination of service of the third respondent by the second respondent; that the petitioner herein has been unnecessarily dragged into the Industrial Dispute especially when the third respondent himself had conceded the fact that his services were terminated while he was working as a permanent employee of the second respondent-Society; the petitioner is in no way connected with the master and servant relationship that existed between the petitioner and the second respondent; that the petitioner is not liable to take the petitioner back into its service.

7. Learned counsel appearing on behalf of the second respondent would submit that the third respondent sought for transfer to the second respondent establishment on foreign service for a period of three years; that on 20.03.1994, the Deputy Registrar, Omalur passed an order appointing the third respondent as an Accountant on foreign service under the second respondent for a period of three years; that a resolution was passed therein that after the expiry of three years period, the third respondent would be absorbed by the petitioner herein with continuity of service; that the second respondent also requested that in the said circumstances, the refusal by the petitioner to absorb the third respondent, with the petitioner Bank is not sustainable.

8. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing learned counsel for the petitioner and the respondents as well, the case of the petitioner management as it comes to be projected before this Court is that the third respondent was employed initially under the petitioner with effects from 01.07.1983 as an Assistant and while he was functioning as an Accountant in the petitioner's establishment, on his representation dated 01.03.1994 he was transferred with the approval of the Deputy Registrar of Co-operative Societies to the second respondent society and while he was functioning there on such deputation, disciplinary proceedings were initiated against him and his services were terminated, aggrieved against which the third respondent initiated I.D.proceedings before the Labour Court and the said Court passed an order requiring the petitioner to induct him into services, objecting to which the petitioner has come forward to file the above writ petition on grounds such as that the third respondent was permanently relieved from the petitioner's society at his request and got posted to the second respondent society and while so, the Labour Court should not have reinstated the services of the third respondent in the petitioner's society and instead, it should have passed orders requiring the second respondent to reinstate the third respondent in its management.

9. In support of the stand taken on the part of the petitioner, the arguments advanced on its part is to the effect that though the third respondent was initially appointed to the services of the petitioner Society, still since on his request and with the approval of the Deputy Registrar of Co-operative Societies, got posted to the second respondent

management, he had become a permanent employee of the second respondent society and that the petitioner is no more the employer of the third respondent nor has there been any relationship of employer and employee that exists between the petitioner and the third respondent thereafter and therefore, the Labour Court should have only required the second respondent to reinstate the third respondent in its services and not in the services of the petitioner society.

10. On the part of the second respondent, it would be argued that the third respondent was appointed to the services of the petitioner society/management and was also regularised and to the convenience of the third respondent, at his request he was deputed to the services of the second respondent for a fixed period of three years and hence the Deputy Registrar of Co-operative Societies also approved the same resulting in the third respondent serving under the second respondent society temporarily on deputation and neither it was a permanent feature nor could the petitioner be called the employer of the third respondent and only agreeing to the service conditions, the third respondent was working in the second respondent society especially, on deputation for three years and therefore, the Labour Court has rightly passed the order requiring the petitioner to reinstate the third respondent in its service thus passing the award in the right manner required under law.

11. This Court is not able to see any basis for the case put up on the part of the petitioner to the effect that it is only the second respondent establishment which should have been required to entertain the third respondent on reinstatement and not the petitioner, in the sense that firstly, the third respondent was appointed only in the services of the petitioner and not that of the second respondent, secondly, it is the admitted case of the petitioner that only on deputation, the third respondent had been sent to the second respondent services and not on any other parameter since the transfer was effected only for a particular period of three years and therefore, on the expiry of the third year, it is only reasonable on the part of the petitioner to have accepted the third respondent back in its services during the normal course. In such event the third respondent's services were terminated while he was serving under the second respondent on deputation and after the legal battle in accordance with the award passed by the Labour Court, he was to be reinstated. Since the three years tenure of service in the second respondent society at that time having lapsed, it is only reasonable on the part of the Labour Court to have ordered reinstating him with the petitioner and not with the second respondent and the same has been promptly done by the Labour Court on a wide discussion held in paragraph 7 of its Award and therefore on the part of the petitioner, at no stretch of imagination it could not put up the argument that the second respondent has become the third respondent's employer and that the petitioner has nothing to do with the services of the petitioner etc., would only mean that the petitioner is shirking its responsibilities towards its own employees and therefore, there is absolutely no pith or substance in the case put up by the petitioner objecting to take the third respondent in its service again and it is only proper on the part of the petitioner to permit the third respondent to join duty abiding by the award of the Labour Court dated 31.03.1999 and made in I.D.No. 112 of 1976 and hence the following Order.

In result,

(i) for the foregoing reasons assigned, the above writ petition does not merit acceptance but only becomes liable to be dismissed and is dismissed accordingly;

(ii) the award dated 31.03.1999 and made in I.D.No.112 of 1976 is confirmed in its entirety.

No costs.

Index :Yes
Internet :Yes
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Ekapuram Post 637 502
Via Elampillai
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